

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 333 of 2024

Indrajeet Rana Son of Nalini Kanta Rana, Resident of Village-
Manusamuriya, Mahushmuriya, Manusmuriya, P.S.- Baharagora, District- East
Singhbhum (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through its Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The Regional Deputy Director, (Education), Magadh Pramandal, Gaya cum Enquiring Officer, Gaya, Bihar.
5. The District Programme Officer, (Establishment) cum Presenting Officer, Nawada, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr. Government Pleader (13)

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

CAV JUDGMENT

Date : 07-05-2025

This petition has been preferred by the petitioner seeking following reliefs:

“... for issuance of a writ in the nature of certiorari for quashing the part of the order dated 11.10.2023 vide Memo No 941 (Annexure P/17) passed by the Secretary Education Government of Bihar, Patna whereby and where under after quashing the order dated 10.08.2018 vide memo of 809 passed by the Director Education (Primary) Government of



Bihar, Patna and further ordered to initiate departmental proceeding under Order 43 (b) of Bihar Pension Rules after expiry of 6 years from the date of retirement i e on and from 28.02.2017 and also for payment of all the retiral dues including pension on and from 28.02.2017 to till today and also for payment of two months full salary on and from 28.12.2016 to 28.02.2017 after quashing the order dated 10.08.2018 vide Memo No 809 passed by the Director Education (Primary) Government of Bihar, Patna and also for quashing the order dated 07.11.2023 vide Memo No 993 (Annexure P/18) whereby and where under the Director Education (Primary) initiated departmental proceeding under Rule 43 (b) of Bihar Pension Rules and Regional Deputy Director, Education Magadh Pramandal Gaya was appointed as Enquiring Officer and District Programme Officer (Establishment) Nawada is appointed as Presenting Officer and further for an appropriate direction/order/orders/command for payment of regular pension to the petitioner and/or for any other order/orders as may deem fit and proper in the facts and circumstances of the case and for any other relief/reliefs for which the petitioner may be found entitled.”

2 Brief facts of the case are that the petitioner was appointed as a Supervisor in Adult Education Department and joined his duty on 16.01.1982. Subsequently, he joined as a Block Education Officer in the month of March, 2007. Thereafter, on the basis of one complaint made by one Binoda Nand Singh, a trap was conducted and the petitioner was caught red handed by the Vigilance Team of taking bribe a sum of Rs 8,000/- on 28.12.2016. He was taken in custody and sent to jail and released from judicial



custody on 17.04.2017. The Vigilance PS Case No 156 of 2016 was initiated against the petitioner under Sections 7/13 (2) read with Sections 13 (1) (D) of Prevention of Corruption Act, 1988. When he was in jail, he retired on 28.02.2017. Subsequently, on 08.09.2017, a departmental charge sheet (Annexure P/3) has been issued against the petitioner. Enquiry Officer and Presenting Officer were also appointed. However, with the charge memo, neither list of witnesses nor any document related to charge levelled against the petitioner were provided to the petitioner. Show cause was called for and filed by the petitioner. The Enquiry Officer, in his enquiry report dated 19.10.2018 (Annexure P/8) arrived on the conclusion that the charge levelled against the petitioner is suspicious and it can only be decided by the competent Court and further gave his opinion that the charge can be proved only on the outcome of the case pending in the Vigilance Court. The Disciplinary Authority, without giving any disagreement or agreement with the Enquiry Officer, issued the second show cause vide letter dated 28.02.2018 (Annexure P/9). The petitioner replied but without considering the reply submitted by the petitioner, the Disciplinary Authority issued a punishment letter (Annexure P/11) vide Memo No 809 dated 10.08.2018 whereby he forfeited 100% pension of the petitioner. Against the



said order, the petitioner preferred an appeal on 13.04.2022 before the Additional Chief Secretary of the Department. The Appellate Authority, vide its order dated 11.10.2023 (Annexure P/17) quashed the order of Disciplinary Authority dated 10.08.2018 and further ordered to initiate fresh departmental enquiry against the petitioner.

3 In the light of the said, the Director of Education (Primary) issued a letter dated 07.11.2023 (Annexure P/18) whereby and where under a proceeding under Rule 43 (b) of Bihar Pension Rules has been initiated and the Enquiry Officer as well as Presenting Officer were appointed. Hence, this petition has been preferred by the petitioner.

4 The learned counsel for the petitioner would submit that decision taken by the respondent is against Rule 43 (b) of the Bihar Pension Rules because Rule 43 (b) of the Bihar Pension Rules mandates that after expiry of four years, the departmental enquiry cannot be initiated. Therefore, on this ground alone, the order dated 11.10.2023 whereby a fresh order of enquiry has been passed under Rule 43 (b) is liable to be set aside. Reliance has been placed by the counsel on the judgment dated 03.09.2024 passed by the Division Bench of this Court on the case of *Srikant Singh -Versus- The State of Bihar & Others (LPA No 58 of*



2024). Also reliance has been placed on the case of *State of Bihar & Others -Versus- Md Idris Ansari, 1995 Supp (3) SCC 56.* Further reliance has been placed on the case of *Nityanand Kumar Singh -Versus- The State of Bihar & Others, 2016 (2) PLJR 315.*

5 The learned counsel for the respondents opposes the argument raised by the learned counsel for the petitioner and submits that since there were so many lacunae in the enquiry proceeding and the Disciplinary Authority passed the order of punishment on the basis of the said order, the Appellate Authority quashed and set aside the order of punishment and passed the order to initiate fresh enquiry against the petitioner. Therefore, invoking the power vested under Rule 43 (b) of the Bihar Pension Rules, the authorities have rightly passed the order of fresh enquiry.

6 I have heard learned counsel for the parties and perused the documents annexed with the petition as well as the counter affidavit.

7 Undisputedly, on the basis of trap, the petitioner was sent in judicial custody on 29.12.2016 and released from the judicial custody on 17.04.2017. Perusal of the initial charge memo issued to the petitioner and the enquiry report clearly shows that neither the list of witnesses were prepared nor list of documents.



Perusal of the enquiry report further shows that the Enquiry Officer himself arrived on the conclusion that the charges levelled against the petitioner are suspicious and it can be proved only after the outcome of criminal case which is pending against him. Further, the Disciplinary Authority, in his order of punishment, wrongly arrived on the conclusion that the Enquiry Officer has found the charges proved against the petitioner. The appellate authority, while considering the appeal, taking note of these facts, rightly quashed the order of punishment dated 10.08.2018 (Annexure P/11) passed by the Disciplinary Authority.

8 Now, the only question remains to be decided is that once the order of punishment has been set aside then the respondents are entitled to get a fresh departmental enquiry initiated invoking the power under Rule 43 (b) of Bihar Pension Rules.

9 At this juncture, it would be appropriate to reproduce the provisions of Rule 43 (b) of Bihar Pension Rules.

“43. (a)

(b) The Appointment authority of the post held at the time of retirement further reserve to themselves the right of withholding of withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in



departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on reemployment after retirement:

Provided that-

(a)

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii)”

10 From a plain reading of proviso (a) (i) of Rule 43 (b), it is quite clear that the departmental enquiry shall not be initiated without getting prior sanction of the State Government. Further perusal of proviso (a) (ii) of Rule 43 (b), it is also clear that the departmental proceeding under Rule 43 (b) shall have to be initiated within four years of an event from which the petitioner was subjected to departmental proceeding. On examination of the facts of this case clearly show that the respondents failed to produce the order of sanction for initiating any proceeding under Rule 43 (b) of Bihar Pension Rules against the petitioner. Further, undisputedly the trap was conducted on 28.12.2016 and the petitioner was sent to judicial custody on 29.12.2016 after



instituting Vigilance PS Case No 156 of 2016 against him under Sections 7/13 (2) read with Section 13 (1) (D) of the Prevention of Corruption Act. Thus, the departmental proceeding started invoking the power under Rule 43 (b) of Bihar Pension Rules by the respondents who passed the order on 07.11.2023 (Annexure P/18) which is near about after 7 years from the registration of alleged offence against the petitioner through Vigilance PS Case No 156 of 2016 which is not permissible in law.

11 Therefore, as discussed above, the part of the order impugned dated 11.10.2023 (Annexure P/17) whereby a fresh departmental enquiry has been directed to be initiated against the petitioner under Rule 43 (b) of the Bihar Pension Rules is liable to be and is hereby quashed and set aside. However, so far as the part of the impugned order dated 11.10.2023 (Annexure P/17), whereby the Appellate Authority quashed and set aside the order passed by the Disciplinary Authority is concerned, the same is affirmed. Consequently, the letter dated 07.11.2023 (Annexure P/18) is also quashed and set aside.

12 The petitioner is entitled to get all pensionary benefits and consequential reliefs. The respondents are directed to release the same within 45 days from the date of receipt of a copy of this order.



13 The writ petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	23.04.2025
Uploading Date	07.05.2025
Transmission Date	NA

